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Appearance *Pro Hac Vice* for Plaintiff Frederick N. Burgener

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

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FREDERICK N. BURGNER,

Plaintiff,

Case No.: 5:07-cv-05160-HRL

-against-

UNION PACIFIC CORPORATION,

Defendant.  
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**REQUEST FOR CONTINUANCE OF INITIAL  
CASE MANAGEMENT CONFERENCE**

1. Plaintiff submits this request for a continuance of the Initial Case Management Conference, currently scheduled for January 29, 2008.
2. This action was commenced by the filing of a *pro se* complaint on October 9, 2008. Plaintiff did not serve the complaint.

3. Thereafter, plaintiff retained counsel, who was admitted to practice in this Court *pro hac vice* on December 13, 2007. On December 14, 2007, counsel for plaintiff served upon defendant's agent for service of process Notice of Lawsuit and Request for Waiver of Service of Summons. Pursuant to Fed. R. Civ. P. 12(a)(1)(B), defendant's answer is due February 12, 2008, which is after the currently scheduled date for the Initial Case Management Conference. Plaintiff intends to serve an Amended Complaint on January 22, 2008, but this will not extend defendant's time to answer beyond the due date for the answer to the initial complaint. *See*, Fed. R. Civ. P. 15(a).
4. Counsel for plaintiff received Waiver of Service of Summons on behalf of defendant on January 14, 2008. On January 18, 2008, counsel for plaintiff telephoned defendant's prospective counsel for the purpose of discussing a stipulated continuance of the Initial Case Management Conference. Counsel for plaintiff was informed that defendant's prospective counsel was out of the office for the week and would not return until January 22, 2008. Because of the imminence of the date for the Initial Case Management Conference, and in view of the fact that a formal appearance on behalf of defendant has not yet been made, counsel for plaintiff has elected to proceed by written Request rather than wait for the return of defendant's prospective counsel.
5. In light of the unintentional delay by plaintiff in serving the Notice of Lawsuit and Request for Waiver of Service of Summons, it is respectfully requested that the Initial Case Management Conference be continued to a suitable date subsequent to the due date for defendant's answer, February 12, 2008.

Dated: Albany, New York  
January 18, 2008

TULLY, RINCKEY & ASSOCIATES, P.L.L.C.  
Appearance *Pro Hac Vice* for Plaintiff

By: /s/ Steven L. Herrick

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